IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

1. **RFA No.116 of 1998 with C.O.No.239 of 1998.**
2. **RFA No. 27 of 1998 with C.O.No. 192 of 1998.**
3. **RFA No.119 of 1998 with C.O.No.240 of 1998.**

Judgement reserved on: 13.7.2007.

Date of decision: 18.7.2007.

(For title, please see reverse)

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants	**:**	**Mr.M.S.Chandel, Advocate General with M.L.Chauhan, Addl. Advocate General.**
For the Respondents	**:**	**Pt. Om Parkash, Advocate. (In all appeals) .**

Kuldip Singh, Judge.

This judgement shall dispose of three appeals, i.e. RFA No.116 of 1998 with Cross-objection No. 239 of 1998, RFA No. 27 of 1998 with Cross Objection No. 192 of 1998 and RFA No. 119 of 1998 with Cross-objection No. 240 of 1998, which have arisen from common award, dated 6.8.1997, passed by learned Additional District Judge (II), Kangra at Dharamshala, in Land Reference Case Nos. 1 of 1995, 3 of 1996 and 2 of 1995, respectively. The parties are referred in the same manner, as in the impugned award.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

2. The brief facts are that State of Himachal Pradesh acquired land measuring 0-69-53 Hectares, situate in Mohal Rehan, Tehsil Nurpur, District Kangra, for construction of Mukerian- Talwara-Nurpur- Chakki Dhar Road and Notification of acquisition was issued, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act), which was published in gazette on 11.3.1989. The Land Acquisition Collector (for short, the Collector), ultimately passed award No. 40, on 9.11.1991. The acquired land of the petitioners as reflected in the impugned award, is as follows:-

Sr. No.	**Case No.**	**Particulars**	**Khasra Nos.**	**Area in Hectares**	**Kind of Land**	
1.	2.	3.	4.	5.	6.	
1.	1/95	Dhan Raj Singh	] 790]	0-03-48	Barani do Fasli	Each of the petitioners
2.	2/95	Fakir Singh	] 778	0-02-52	-do-	having 1/3rd share in the above land.
3.	3/96	Gagan Singh	]			
			Kitta 2	0-06-00	-do-	

3. The Collector assessed the market value of the land, as follows:-

Sr.No.	**Class of land.**	**Rate of Hectare.**
1.	Barani Do Fasli	Rs. 2,51,384/-
2.	Barani Ek Fasli	Rs. 1,58,768/-
3.	Banjar Qadim	Rs. 1,58,768/-

4. The petitioners were not satisfied with the market value assessed by the Collector, therefore, they filed Reference Petitions, under Section 18 of the Act, and learned Additional District Judge, assessed the market value of the acquired land at the rate of Rs.

13,15,000/-, per hectare, uniformly irrespective of the quality of the land. The learned Additional District Judge has awarded 12% increase, under Section 23(1-A) of the Act, from 1.11.1977 i.e., date of taking over the possession of the acquired land to 9.11.1991 i.e., the date of award by Collector, 30% compulsory acquisition charges, under Section 23(2) of the Act, 9% per annum interest under Section 28 on enhanced compensation from the date of possession 1.11.1977 to 30.10.1978, and thereafter at the rate of 15% per annum interest w.e.f. 1.11.1978 to the date of payment, 9% and 15% per annum interest under Section 34 as per impugned award.

5. The Collector Land Acquisition has assailed the impugned award by way of above appeals. The petitioners have filed cross-objections No. 239 of 1998 in RFA No. 116 of 1998, 192 of 1998 in RFA No. 27 of 1998 and 240 of 1998 in RFA No. 119 of 1998.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned Advocate General has submitted that learned Additional District Judge has awarded excess compensation to the petitioners. The sale deed Ex. PW 6/A dated 26.10.1988, vide which an area measuring 0-01-14 Hectares, was sold for Rs. 30,000/- has been wrongly relied. The land covered by sale deed Ex. PW 6/A is about 6 Marlas, whereas, the total land acquired, vide award No. 40 is 0-44-51 Hectares, i.e. about 18 Kanals. The sale deed Ex. PW 6/A is of small area and, therefore, for assessing the market value of large area acquired land, it cannot be relied. The learned Additional District

Judge, has awarded various increases and interests on the enhanced compensation, which are in violation of the Act.

8. The learned counsel for the petitioners has submitted that learned Additional District Judge, has erred in making deduction from the market value assessed on the basis of the sale –deed Ex. PW 6/A. The Collector has erred in not relying the sale deed Ex. PW 3/A for assessing the market value. The acquired land of the petitioners is of small area and the sale deeds Ex. PW 6/A and Ex. PW 3/A are also of small area, therefore, after assessing the market value of the acquired land on the basis of Ex. PW 6/A dated 28.10.1988 and Ex. PW 3/A dated 24.3.1988, no deduction is required to be made from the market value.

9. The learned counsel for the parties have jointly stated that in terms of meters, the total acquired area in three appeals is 600 square meters. In sale deed Ex. PW 6/A, 114 Sq. meters land was sold for a consideration of Rs. 30,000/-. The learned Additional District Judge has rightly taken into consideration Ex. PW 6/A in preference to sale deed Ex. PW 3/A. The sale deed Ex. PW 6/A is dated 26.10.1988 and is more proximate in time to the notification, under Section 4 of the Act, which was published in the gazette on 11.3.1989. The market value of the acquired land on the basis of the sale deed Ex. PW 6/A comes to Rs. 26,30,000/- per Hectare.

10. The acquired land of the petitioners in all the appeals is of small area, therefore, after assessing the market value of the acquired land, the learned Additional District Judge has erred in allowing deduction at the rate of 50% from the market value assessed by him on

the basis of sale deed Ex. PW 6/A. Therefore, the market value of the acquired land of the petitioner is assessed at Rs.26,30,000/- per hectare instead of Rs. 13,15,000/- assessed by the learned Additional District Judge.

11. There is force in the contention of the learned Advocate General that learned Additional District Judge has erred in allowing various increases and interests in the impugned award, which are in violation of the Act. The petitioners are entitled to 12% per annum increase on the market value under Section 23(1-A) of the Act from 11.3.1989 the date of notification under Section 4 of the Act to 9.11.1991 date of the award of the Collector, 30% compulsory acquisition charges under Section 23(2) of the Act, 9% interest on the enhanced compensation from the date of notification under Section 4 of the Act i.e. 11.3.1989 to 11.3.1990, and thereafter at the rate of 15% till the enhanced compensation is paid to the petitioners or deposited in the court.

12. The result of the above discussion is, RFA No.116 of 1998 with Cross-objection No. 239 of 1998, RFA No. 27 of 1998 with Cross-objection No. 192 of 1998 and RFA No. 119 of 1998 with Cross-objection No. 240 of 1998, are allowed. The market value of the acquired land of the petitioners is assessed at Rs.26,30,000/- per hectare instead of Rs. 13,15,000/-, as assessed by the learned Additional District Judge The petitioners are entitled to 12% per annum increase on the market value, under Section 23(1-A) of the Act, from 11.3.1989 date of notification under Section 4 of the Act to 9.11.1991 date of the award of the Collector, 30% compulsory acquisition charges

under Section 23(2) of the Act, 9% per annum interest on the enhanced compensation from the date of notification under Section 4 of the Act i.e. 11.3.1989 to 11.3.1990, and thereafter at the rate of 15% till the enhanced compensation is paid to the petitioners or deposited in the court.

13. No other point was urged.

14. The appeals and cross objections are disposed of in the above terms. No costs.

July 18, 2007. **(Kuldip Singh)**
(*Hem)* **Judge.**

1. **RFA No. 116 of 1998 with C.O.No. 239 of 1998.**

Collector Land Acquisition ….. Appellant.

Vs.

Dhan Raj Singh ….. Respondents.

2. **RFA No. 27 of 1998 with C.O.No. 192 of 1998.**

Collector Land Acquisition & anr. ….. Appellants.

Vs.

Gagan Singh ….. Respondent.

3. **RFA No. 119 of 1998 with C.O. No. 240 of 1998.**

Collector Land Acquisition ….. Appellant.

Vs.

Faquir Singh ….. Respondent.